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White Collar Management

A timely report on cases and decisions affecting management-employee policies and practices.

MAN & MANAGER, INC. · 799 BROADWAY · NEW YORK, N. Y. 10003

HIRING PROCEDURES

If You Hire A Management Trainee 'On Probation' Can You Let Him Go Before His Trial Period Ends?

The Problem: The Company initiated a recruiting and training program to meet a shortage of traffic managers needed to supervise the flow of highly explosive cyrogenics (liquid gases) to missile bases. John Wallace, a recent graduate chemical engineer who was looking outside his company for something more challenging than his present post, handling *petroleums, put in for the job.*

"Here's our program," personnel told him. "You get two weeks training and then we take you on for a 30-day trial. If you fill the bill, the job is yours."

"Suits me fine," Wallace answered. "When do I start?"

He was told to sign a printed slip which said:

"The undersigned understands he is hired on a 30-day trial period. If there is any falsification of references or misstatements on the application or if he is found to be physically unfit, or fails to prove himself qualified, it will be sufficient cause for the Company to terminate his employment without recourse."

Sent to Spokane on September 29th for training, Wallace did not last the probation period. On October 17th, he was handed his walking papers.

"Wait a minute," he said. "You can't fire me before the 30 days are up."

"Why wait?" management asked him. "We are convinced right now you can't do the job. So we are letting you out."

Wallace sued in court for his 30 days' pay. He asserted:

1. Suppose I'm a slow starter. That doesn't mean I cannot fill the job. That's why we agreed on a 30-day trial period.
2. I might not have taken a job with only a 10-day probation period.
3. My work is okay. The Company fired me on a false accusation that I was spying for my last employer.

Management had a ready answer:

- ► A company has the right to dismiss a probationary worker at any time.
- ► Read the agreement Wallace signed. It gives us the right to fire him "if he fails to prove himself qualified." He failed.

The Answer: *The employee must be paid the full thirty days.* So ruled the Wyoming Supreme Court. And added: When a fixed period of probationary employment has been mentioned during the hiring interview a company is committed to the time specified. In the Court's view, anyone on probation must be given his full time to prove himself.

The Court gave short shrift to the agreement which Wallace signed. Too ambiguous, the judge opined. (386 P. 2d 934)

WHAT TO DO: In reviewing your hiring policies, check the following:

- √ Is it made clear to the applicant that the probationary period is designed to help the company evaluate the employee?
- √ Is the employee told in specific terms that he can be let out *before* the probationary period ends for *any reason whatsoever?*
- √ Are your department heads and supervisors advised periodically of your policies—and any changes?

POLICY POINTER ➔ Many companies, to preserve freedom of action, are steering clear of the numbers game in hiring white collarites. They simply have no fixed probationary period.

EMPLOYEE REFERENCES

How Confidential Are The References A Company Gives About An Ex-employee?

The Problem: Two reasons made Sam Gregor leave his job after nine years—and move to Florida. First, his wife, Sylvia resented the Philadelphia winters—and second, Sam, an auditor for a big insurance company, resented his supervisor, Charlie Pendergast. There had been hard feelings and harsh words between the two and Sam, several times, had exploded into violent rage.

But Sam had no doubt he could find outlets for his talents in Daytona Beach, where the Gregors settled. Sam singled out an important insurance brokerage house, Loeb & Ampere, to apply for a job. He journeyed to Atlanta, the main office, several times and was interviewed in depth by Sid Loeb, the vice-president.

From all appearances, the job was his and when he was asked for references, Sam gave The Casualty Company, his old employer, and two personal friends of standing in Philadelphia.

Not much later, Sam's bright prospects darkened on receipt of a letter from Sid Loeb withdrawing the offer of employment and stating:

"To my sincere regret, we received a reply to our letter of inquiry to one of your references and this reply gives us information which makes it impossible for us to offer you a position."

Sam made a beeline for the phone and called Loeb. "Who," he demanded to know, "could give you any kind of information that would make it impossible for you to offer me a position?"

Loeb's answer is a matter of dispute. But Sam later testified (and the jury believed him) that Loeb answered: "Why, your old friend Pendergast."

Sam suffered a nervous breakdown. Later, he slammed away at his old employer, and his ex-superior, Pendergast,

with a $100,000 damage suit for slander. The jury awarded $21,000 damages which Sam collected.

It was Casualty's turn to sue. Ampere & Loeb were hauled into court on its demand to be repaid the $21,000.

"Employment references are confidential," Casualty declared. "Any company that reveals the source of an unfavorable reference breaches a trust. We were forced to pay $21,000 because of Ampere & Loeb's indiscretions. Let them make good for it."

The brokerage house replied: "We never disclosed the source. But it is obvious the job applicant would know since he only gave one business reference. We can't help it if he can put one and one together and get two."

The Answer: *References are very confidential . . . and the employer who does not treat them as such exposes himself to legitimate lawsuits.* So said the U. S. Circuit Court.

This then raises an issue of fact the Court said—that is, whether the brokerage house violated the confidence. There is much in the evidence to indicate a breach (such as the telephone call, office memos written by Loeb on the subject, the wording of the letter to Gregor turning him down).

But the final decisions must be made by the jury. So let the case be tried and let a jury decide. (336 F. 2d 33)

POLICY POINTERS Here are a few safety precautions:

√ References should be asked, received and studied before an applicant is given to understand a job is virtually his.

√ The letter rejecting an applicant should be so vaguely worded that the applicant cannot pinpoint the reason. An impersonal form letter giving no specific reasons is best.

√ No discussions of reasons by telephone or in post-rejection personal interviews should be permitted.

DISCRIMINATION — Can An Anti-Bias Board Order A Firm To Hire A Negro Executive?

The Problem: Along with fifty other women, Margaret Priestly applied for an executive job in personnel administration with a nationally known insurance company that employs thousands—in answer to an ad placed in The Hartford (Conn.) *Times*.

► The ad offered good pay for a college graduate with three to five years' experience.

The company cut down the 50 application letters to five likely candidates. Mrs. Priestley, a Negro, survived that process along with four white women. Interviews with a number of executives took hours. The background, personality, appearance, education and experience of the five were explored by management.

Two of the applicants took other jobs and eliminated themselves. The remaining trio were summoned for another intensive interview—then the job was given to Mrs. Gladstone, a white.

Mrs. Priestley was complimented on her showing as runner-up and offered a lower-paying job with the casualty underwriting department.

She flatly refused it. Instead, she complained to the Connecticut State Commission on Civil Rights. "The company was prejudiced against me for racial reasons," she said. Just look at these facts:

► My education was far superior. I hold an M.A. from Northwestern in Personnel Administration. Mrs. Gladstone has no college degree.

► The company concedes my personality and appearance were highly rated.

► It is significant the company has never hired a Negro for professional or semi-professional jobs.

Management rebutted: "We chose Mrs. Gladstone because she has more specific experience in the work – so it would be less effort to train or supervise her.

A series of Commission hearings followed.

The Answer: *The company won BUT . . .* The Connecticut Anti-Discrimination Board made it clear that it was disturbed by the lack of higher jobs in the company for Negroes. If the situation continued it might reexamine the company's hiring practices. In this case, the Board listed these factors in management's favor:

1. Courteous treatment accorded the applicant in her interviews.
2. The fact that she was given high ratings for personal qualities.
3. Her excellent training and background were thoroughly discussed and commended by the interviewing executives, and she was called back for a second interview.

"We cannot," the Board commented, "substitute our opinion for that of the employer where both applicants are well qualified and where both received fair consideration." (Conn. F.E.P.C. No. 188)

REMEMBER About 22 states now have no-discrimination-in-employment laws. But, even if your state doesn't have such a statute, you'll be affected by the U. S. Civil Rights Law which became effective July 2, 1965.

The federal law sets up an Equal Opportunities Commission with authority to investigate charges of bias in employment. Furthermore, anyone who feels that he has been barred from a job because of race or religion will be able to sue in the federal courts.

EMPLOYEE COMMUNICATION — Can Promises In The Employee Handbook Get You Into Trouble?

The Problem: Business was good and the board of directors decided to pass some of the high profits on to employees *not covered by collective bargaining.* It voted improved fringe benefits—and personnel circulated a new handbook outlining the good things in store for employees.

The booklet was divided into: Working Conditions; Special Information; Industrial Relations Plans; and explained what the company was doing on insurance, sickness, military duty, vacations, and other extra-wage benefits.

The handbook wound up with a heading, "Dismissal Wages and Salaries," which said:

"In addition to all salaries earned for work performed, a dismissal salary will be paid to any eligible employee who is laid off for an indefinite period because of a reduction in forces or plant shut-down. No employee, however, will receive dismissal salary if he 'quits' or if he is 'discharged for cause.'" With this went a graduated schedule of severance pay.

Much company business depended on Government orders. A year later things were no longer at boom proportions. Management advised supervisors that new separation schedules at reduced rates would go into effect. Still later, fixed schedules were withdrawn completely.

No new handbook was printed—the old one had long ceased to be distributed—and employees were not told of changes.

Several company plants closed down and office personnel shrunk to match depressed activity. Among the heads that rolled was Tom Boston's. When Tom found his pink slip and final check, he marched into the head office with fire in

his eyes. "Where is my severance pay?" he asked indignantly.

"Sorry," he was told, "but severance payments have been dropped. Business is terrible and company is tightening its belt."

"You made a promise to the employees," Tom argued, "and you can't back out now. Why, that was one of the reasons I stuck it out here instead of looking for another job." And Tom was part of a group of ex-employees who sued the company.

When the case came to court, the company pointed to a clause in the handbook that read: "The following are only brief outlines of such plans as they are in effect at present. They are subject to change or discontinuance from time to time. The office superintendent or personnel superintendent will be glad to furnish you with up-to-date details at any time."

"That lets us out," the company argued. "These men could have learned of changes just by inquiring. Besides, the benefits are free—and not at all binding."

The Answer: *If you make a promise in a handbook, you have to live up to it,* the Supreme Court of Virginia stressed.

"The promise of severance pay in company literature amounts to an offer, which if accepted and performed on by employees, fulfills the legal requirements of a contract." The employee collected his severance. (58 S.E. 2d 804)

WHAT TO DO: Most employee handbooks are written by personnel or public relations departments and are viewed as communications devices rather than legal obligations.

- √ This case should alert all executives to this fact: house organs, bulletin board notices and handbooks of all kinds can be binding on the company.
- √ When policy changes are made, employees must be told. The burden of communication is on the company – not the employee. The management which advises its employees to "check with your supervisor" is not adequately covering itself.

If a benefit promised in a handbook is subsequently cut or eliminated, employees are still entitled to those fringes up to the time of the official change.

POLICY POINTER Changes in policy should be directed to employees through such personal media as letters to the home, bulletin board notices, payroll stuffers or prominent announcements in the house organ.

OFFICE GRIPES

Can A Company Organize 'Round-Table Discussions' To Air White Collar Grievances?

The Problem: Peter Burton, director of industrial relations, had a feeling the white collar help could be handled far better if machinery was set up to bat around ideas and problems with the employees.

He hit upon the idea of regular round-table discussions with representatives elected by non-union help. The company would pay these employees for the time they spent at the meetings, and the minutes covering all conceivable subjects of mutual employer-employee interest would be published in the house organ.

Top management approved. Burton got up a brochure which said the possible areas of discussion would be wages, performance, benefit programs, general areas of company progress and company practices.

"In short," the brochure said, "the purpose of the round-table is to provide you with a regular means for telling us about your problems, your complaints, or about your ideas and suggestions – and for asking any question which you feel is important to you as an employee of the company.

"It is also intended to be a means of sharing information with you – on a monthly basis – about all phases of the company's affairs, including the problems, policies and plans."

Elections were held; talkfests went on and the minutes were periodically published in the house organ. Then a union appeared on the scene. It was trying to organize part of the clerical force and found itself hampered by the round-table setup.

"Why do we need a union?" some employees asked. "Management listens to our gripes at the round-table – and reforms are in the wind."

The union filed a charge with the National Labor Relations Board. "Make the company drop these round-table talks," the union demanded. "What they are doing is an unfair labor practice banned by federal laws. It is nothing more than a company union."

"Nonsense," the company retorted. "It is a way of working more closely with employees. It has none of the earmarks of a union – such as regular members, dues, officers."

The dispute ended up before the NLRB.

The Answer: *Disband the round-table,* the NLRB ordered. To quote: "The company does not deny responsibility for the unilateral establishment of the round-table. Throughout its existence the company scheduled all the meetings, established the agenda of topics to be discussed, and otherwise controlled the operations."

The fact that the members of the round-table paid no dues, had no constitution, no by-laws, no membership requirements and other trappings of a labor union was turned down by the NLRB as immaterial in this case. (NLRB No. 94-64)

OBSERVATION Management still has every right to establish communications pipelines with its employees.

It can meet with them individually or in groups. It can discuss mutual problems. But the accent must be on informality.

Once the company sets up rigid machinery for handling employee complaints, foots the expenses, provides secretarial help, supervises elections and draws up an agenda, the resultant organization begins to take on the mantle of a "company dominated union"—which is illegal under the Wagner Act.

PENSION PROBLEMS

Can A Firm Refuse Retirement Pay To An Employee Who Lied About His Age?

The Problem: In 1950, at the age of 52, Armand Creedy knocked fruitlessly on a string of office doors looking for a job. When he gave his true age, employers' eyebrows went up and Armand was turned down. There was no work for a 52-year-old, and Armand decided to rejuvenate himself by knocking off seven years.

The stratagem worked. He was hired and worked for 13 years—until he reached the true age of 65. In the meantime a new pension plan went into effect allowing any employee who worked continuously for ten years to retire at 65.

"This definitely means me," Armand gleefully told himself. He gave his employer notice. At the same time he

filed for a pension.

The retiring employee was called into the front office. "How can you apply for retirement, Mr. Creedy, when our records show that you are only 58?"

Armand grinned. "That was just a little white lie to get the job. But that's water over the dam. My real age is 65."

"We know you're 65," the company official informed Armand. "We knew that for some time. So far as the company records are concerned, you are 58. If you lied about your age, you have to live with it."

Armand asked for arbitration and the company agreed. "The company has not lost one nickel because of his little white lie," the arbitrator was told. "It even knew of it when it signed the pension pact.

"Besides, others had been allowed to correct their records of birth – why shouldn't I?

"What's wrong about lying to get a job? Everybody who has to, does it."

The company just as stubbornly opposed Armand's plea:

- ► If we allow people to lie about their age and change it later, our entire system of pension is jeopardized. How can an employer negotiate a pension system with a union if it does not know its potential obligations under it?
- ► True, we have permitted others to correct records. But those were to iron out mistakes. Nobody who deliberately lied has been given that right.

The Answer: *The employee lost.* "The predicament which the employee now finds himself in is solely the product of his own making," noted Arbitrator Vernon Stouffer.

"If the employee is permitted to receive pension benefits prior to the date he would normally be entitled to them—a premium will be placed on the practice of deceit and other employees will be encouraged to also misrepresent material facts.

"Condonation of the employee's conduct would create discrimination against all other employees denied equal treatment. This would result in chaos and destruction of the pension program."

Armand was told he must wait until he reaches 65 *on the company records.* (43 LA 901)

»POLICY POINTER➔ Review your hiring procedure particularly the language of employment applications. Most companies have inserted a disclaimer which entitles them to fire any employee who misrepresents personal history in the application.

To get the message across to the candidate for a job, a clause could be added stating that the applicant will be bound on all fringe benefits and pensions to the age he states in his application.

EXECUTIVE PAY

Can An Executive Charge His Company Overtime For Long Hours?

The Problem: Tribal rites demand that no busy executive be seen going home at the end of a long day without an attache case stuffed with homework – so goes the credo.

Danton Robins decided to test the rights of the overworked executive, so when the figurative briefcase became too heavy, he laid it down – and sued his company for overtime pay.

Robins was hired to manage a company plant. Before then, he met with Joe Grainger, company president, to discuss "working hours."

"I don't mind working hard," Robins said, "when emergencies demand it. But I don't believe in long hours – they should not be necessary if I do my job."

Robins was a good man and Grainger wanted him. "Danton, there is no reason in the world for you to work longer than eight hours daily," Grainger reassured him.

Robins signed and moved into the job. He saw it would be impossible to run the badly disorganized plant on an eight-hour stint. He was frequently lucky to get home after putting in 12 hours.

President Grainger was the target of telephone calls and letters in which Robins indignantly protested the overtime he was putting in.

- ► Every time Robins collected his pay check, he complained – but always signed a receipt acknowledging full payment.

He stuck to the job until the day came when Grainger asked him to supervise two plants instead of one. Robins walked out in a huff. He sued for overtime, arguing:

1. My job called for an 8-hour day. I worked 12 hours. The company owes me salary for over 1,000 hours.
2. Nobody, including an employer, has the right to expect something for nothing. There was an implied agreement to pay me for overtime.

The company emphatically disagreed. "There was no agreement to pay for overtime. Robins worked voluntarily and all executives are expected to work overtime."

The Answer: *The "overworked" executive lost.* The rule is that an executive on the payroll of a company, employed for a *fixed* salary, cannot recover for extra hours of work voluntarily performed, the West Virginia Circuit Court said. Unless the employer agrees specifically to pay a premium for overtime, there can be no successful suit to win extra pay. (107 S.E. 285)

»REMINDER➔ You can't owe an executive overtime pay *so long as he's doing executive work,* even if he puts in more than the permissable 40 hours. But, if you let him play a lesser role for even a fraction of his time, you may be in for trouble.

If more than 20% of his time goes into non-executive work; the U. S. Labor Department will award him overtime pay. Here are samples of typical non-executive duties as the government sees it:

- √ Routine clerical work such as bookkeeping, billing and filing.
- √ Keeping records for workers *not* under his supervision.
- √ Preparing payrolls.
- √ Taking an employee's place at his desk.
- √ Making sales.

An Exception: If the work was so different in nature as to create a natural inference of extra pay. It would be the sort of work that could not be expected from him as part of his normal duties.

If, for example, Robins was told to use his spare time to look around for another business the company might invest in, this the court might consider to be compensable overtime.

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MANAGEMENT PROGRAMS

PUBLISHERS OF:

Employee Relations in Action
Employee Relations in Government
The Businessman & The Law
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White Collar Management

Dear Sir:

At the request of many of our subscribers, we are about to expand our coverage of the employee relations field by publishing a twice-a-month newsletter dealing with white-collar personnel.

As you know, standards and policies are not as clear-cut in the white-collar area. Educational backgrounds range from high-school to PH.D. -- areas of responsibility run from clerk to executive -- supervision and company policies tend to be more informal.

In the blue-collar field, management is guided by the union contract. The ground-rules are set upon signing..."The employee is entitled to thus and so and must perform in the following manner."

Since this is not usually the case in the white-collar area, many an employer has been led to believe that he can do pretty much as he pleases -- that his policies with his white-collar people need not be as carefully spelled out.

Nothing could be further from the truth.

Over the past five years, there has been a 10-fold increase in the number of court cases involving white-collar employees and their companies. New precedents have been set -- many new government regulations dealing with issues like fair employment practices, equal opportunity, wages, & hours, compensation, pensions, etc. have been added -- substantial gains in the highly-organized blue-collar area have created pressures on white-collar workers to keep pace.

News travels fast these days. Rights, privileges and company policies are compared and openly discussed -- and many of these policies are being challenged by a more sophisticated work-force which makes frequent use of the courts and government boards.

These are problems which the free-wheeling businessman of even 20-years ago seldom had to think about -- particularly in the white-collar area. Today, they are crucial.

It's not a question of who will win in a show-down. The objective is to be fair, yet in firm control of your business -- to avoid leaving your company open to an unpleasantness which could have been avoided in the first place. It's costly in terms of time, money and possible unfavorable publicity.

Twice a month, WHITE COLLAR MANAGEMENT will keep you abreast of new legislation and court decisions which affect your employee policies. (See enclosed index for the range of subjects covered.)

over please

Edited by Dr. Lawrence Stessin, Professor of Management at Hofstra University, Ira Wit and Elmer Ellentuck, both members of the New York Bar, WHITE COLLAR MANAGEMENT --

1. Tells you which policies are being challenged by citing actual court cases.

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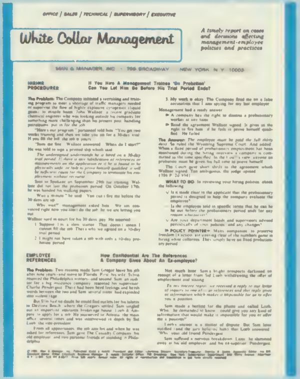
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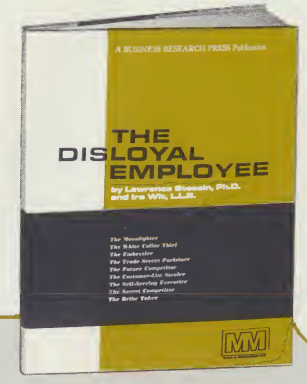

— a hard-hitting, straight - from - the - shoulder Study on one of the most serious yet least talked about problems facing American business today.

We're not only referring to outright hands-in-your-pockets stealing, although that's a $10-billion a year business problem and growing at around 15% a year. Some people call it "America's most dynamic growth industry".

What about *the more subtle* kinds of business larceny; the executive who capitalizes on "inside" information, the moonlighter who talks too much, the ex-employee who no longer feels honor-bound, the competitor who sets lures for key men, the ex-employee who strikes out to compete with you?

Who owes who what?

What is employee disloyalty anyway? Some business "philosophers" believe that the so-called disloyal employee is really a by-product of a healthy and perfectly ethical set of business practices. The right of any person to try to improve his economic lot by changing his job or staking out a piece of entrepreneurial preserve for himself is a cultural and legal heritage that often astonishes businessmen in other parts of the world.

But there's the rub. Obviously, an employee who severs his connection with his company is *NOT* disloyal, although it is often difficult to convince his boss otherwise. Behind every resignation is the gnawing suspicion that the departing employee is bringing to his new job more than just a burning desire to make good. A key man is a bundle of know-how, often in the form of trade secrets. He is a human file of customer lists, memoranda, reports, market analyses and product developments.

CONTINUED

Even if the new employer is not a "partner in crime", there remains the question of how much inside knowledge the employee can use on his new job without encouragement or prodding from the new boss. Or if an employee decides to go out on his own, *what ethical boundaries must he respect?*

The managerial strategy for handling "disloyalty" is by no means confined to head-shaking or tongue-clucking. Businessmen are not prone to take lightly threats to their organizational security. They quickly take to the courts—and within the past few years, the number of "disloyalty" litigations has risen from a ripple to a wave.

WHEN KEY PEOPLE QUIT

The creative engineer who comes in to say goodbye to his boss because he is going with a competitor is just as likely to be served with a summons than receive a "Godspeed" or a blessing. The salesman who decides to fulfill the American dream and go into business for himself may find that his employer does not share his brand of patriotism and is suing him for trespassing on the private property known as the customer. The company that aggressively seeks out your people and uses more than reasonable persuasion might have to justify to a jury that its actions are all in the good cause of free enterprise.

This 130-page study deals with just these problems and many others as well. The material is taken from conflicts that have gone to court and the decisions of the judges provide valuable insights into the "right-and-wrong" of employee competition.

At $10-per-copy, "THE DISLOYAL EMPLOYEE" is not primarily designed to help a reader win a case in court. Rather its aim is to *aid the executive in formulating a set of policies* and procedures that will give his organization the maximum of protection. For once a conflict has gone to court, time is lost, costs are high and the results in doubt. The prudent employer will try to insulate his personnel program with the kinds of controls which will keep a quitting employee from becoming a "disloyal" employee.

The presentation and format of this 130-page Study are designed to help you do just that.

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